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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

DEC 22 2015
OPINION 15-0135

125 – TAXATION – Homestead Exemption
La. Const. art. VII, § 20

Rickey J. Huval
Iberia Parish Assessor
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Two natural person usufructuaries, who, at the time their usufruct was granted, were the immediate prior owners of the property and who occupied the property as their homestead both before and after the property was transferred, may claim the homestead exemption under La. Const. art. VII, § 20(A)(4), regardless of who holds the naked ownership of the property.

Dear Mr. Huval:

You have requested an opinion from this office concerning the eligibility of the holders of a usufruct to retain or receive the homestead exemption under La. Const. art. VII, § 20. Specifically, your request states that the homeowners donated their home to their daughter in February of 2014. In the donation, they reserved a usufruct over the property for the remainder of their lives. Prior to the donation, the homeowners enjoyed a homestead exemption on the property. Subsequent to the donation, the daughter transferred the home to a single member limited liability company that she created for holding her properties. You have asked whether the original homeowners, who currently hold a usufruct on the property, are eligible for the homestead exemption.

The authority of a usufructuary to claim a homestead exemption is contained in La. Const. art. VII, § 20(A)(4). La. Const. art. VII, § 20(A)(4) states:

The homestead exemption shall extend to property where the usufruct of the property has been granted to no more than two usufructuaries who were the immediate prior owners of the homestead and the homestead is occupied as such by a usufructuary. The provisions of this Subparagraph shall apply only to property which qualified for the homestead exemption immediately prior to the granting of such usufruct, or which would have qualified for the homestead exemption if such usufruct had not been granted.

Under this provision, the homestead exemption extends to up to two usufructuaries as long as the following are met: (1) the usufructuaries were the immediate prior owners of the property at the time the usufruct was granted, (2) the property is being occupied by the usufructuaries as their homestead, and (3) the property qualified for the homestead exemption immediately prior to the granting of the usufruct. It appears as though the

circumstances stated in your request meet these requirements. The current usufructuaries were granted their usufruct when they transferred the property to their daughter, and they occupied the property as their homestead both prior to and after transferring that ownership.

Although the usufructuaries identified in your request appear to meet the requirements of La. Const. art. VII, § 20(A)(4), we must address the conclusions of La. Atty. Gen. Op. No. 13-0110, which is referenced in your request. In that opinion, this office was asked whether the homestead exemption applied when a person transferred his ownership interest in property to a limited liability company and retained a usufruct over the property. The usufructuary occupied the homestead both prior to and after the property was transferred to the limited liability company. This office found that the usufructuary could not claim the homestead exemption, despite qualifying under La. Const. art. VII, § 20(A)(4), because the provisions of La. Const. art. VII, § 20(A)(5) allow for the homestead exemption to extend only to natural persons. The opinion concluded that the usufructuary could not claim the homestead exemption, because the property was owned by a limited liability company, which is a juridical person rather than a natural person as required by La. Const. art. VII, § 20(A)(5).

After further consideration, it is our belief that the conclusions reached in La. Atty. Gen. Op. No. 13-0110 are misplaced. We do believe that the homestead exemption can only extend to a natural person, and that a limited liability company is not a natural person that can claim the homestead exemption. Thus, a limited liability company holding full ownership in property would not be able to claim the homestead exemption. However, we do not believe that La. Const. art. VII, § 20(A)(5) prevents a usufructuary qualifying under La. Const. art. VII, § 20(A)(4) from claiming the homestead exemption. Under La. Const. art. VII, § 20(A)(4), the homestead exemption extends to the usufructuary occupying the property as a homestead, not to the naked owner of the property. Indeed, it is the usufructuary, not the naked owner, that is liable for paying the property taxes during the usufructuaries' enjoyment of the usufruct. See La. C.C. art. 584. Thus, as long as the usufructuary is a natural person that qualifies for the homestead exemption under La. Const. art. VII, § 20(A)(4), that person can claim the homestead exemption.

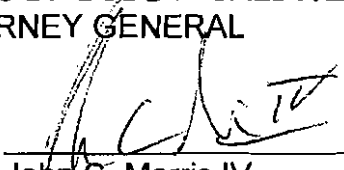
Accordingly, it is the opinion of this office that two natural person usufructuaries, who, at the time their usufruct was granted, were the immediate prior owners of the property and who occupied the property as their homestead both before and after the property was transferred, may claim the homestead exemption under La. Const. art. VII, § 20(A)(4), regardless of who holds the naked ownership of the property. It is further the opinion of this office that La. Const. art. VII, § 20(A)(5) does not prohibit the homestead exemption from extending to such usufructuaries, as they are natural persons. To the extent that La. Atty. Gen. Op. No. 13-0110 conflicts with this conclusion, it is recalled.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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By:



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